IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10406 of 2000

with

Civil Application No. 791 of 2002 in

Special Civil Application NO. 10406 of 2000.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

KANAIYALAL SOMLAL TADVI

Appearance:

MR KM PARIKH for GSRTC.

MS PARAGI K PARIKH for GSRTC

MR JS BRAHMBHATT for Workman.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/02/2002

ORAL JUDGEMENT

In the main matter, rule has been issued by this Court on 4th October, 2000 by making it returnable on 7th November, 2000. Thereafter, the respondent workman has filed the aforesaid civil application for the relief under section 17-B of the Industrial Disputes Act. Therefore, Civil Application No. 791 of 2001 was notified before this Court today alongwith the main matter. In the facts and circumstances of the case and with the consent of the learned advocates for both the sides, main matter was taken up for final hearing today.

Heard learned advocate Mr. K.M. Parikh for the petitioner Corporation and Mr. Brahmbhatt for the respondent workman. In the main petition, the petitioner has challenged the award made by the labour court, Baroda in Reference No. 1104 of 1995 dated 14th June, 1999 wherein the labour court has granted reinstatement with continuity of service but without back wages for intervening period. In response to the notice of rule issued by this Court, the respondent workman has filed affidavit in reply which is on the record of this petition.

During the course of hearing, learned advocate Mr. Parikh has submitted that the labour court has committed gross error in exercising the powers under section 11A of the Industrial Disputes Act, 1947, once, the labour court has come to the conclusion that the respondent workman has committed serious misconduct. The charge against the respondent workman was to the effect that while he was on duty as a driver on Dabhoi Dariapura Route, he left the bus for about half an hour and consumed liquor and as he was drunken, no passengers got-in the bus and he took the bus without passengers on 1st July, 1993. One passenger Yogesh Patel has filed complaint against the driver that he has stopped the bus with an intention to consume liquor and, therefore, according to Mr. Parikh, in view of such seriousness of the charge against the workman that he has consumed liquor while on duty and since there was an independent witness, the labour court ought not to have exercised the powers under section 11-A of the Industrial Disputes Act, 1947. He has also submitted that before the labour court, the respondent workman has admitted the legality, validity and propriety of the charges levelled against him and has also admitted the inquiry proceedings and as a result thereof, charge of misconduct levelled against him was proved before the labour court and yet the labour court has exercised the powers under section 11-A of the

Industrial Disputes Act, 1947 with sympathetic approach to reinstate the respondent workman.

Learned advocate Mr. Brahmbhatt has submitted that the respondent has put in more than 12 years' service and his past record was clean. It was his first misconduct and the labour court was right in exercising such powers. He has further submitted that it is the duty of the disciplinary authority to take into account the gravity of misconduct, socio economic back ground and the family back ground as well as length of service and past record of the delinquent while imposing the punishment but in this case, the disciplinary authority has not considered these aspects while imposing the punishment and, therefore, the labour court has rightly exercised such powers. He has, however, submitted that the labour court has denied back wages for the whole period while making the award of reinstatement in favour of the respondent workman and denial of such back wages is sufficient punishment upon the respondent workman. He has, however, submitted that if this Court feels that some more punishment is required to be imposed in view of the misconduct, then, the court may exercise the powers and impose some proper punishment upon the respondent workman. As against that, learned advocate Mr. Parikh has submitted that the denial of back wages cannot be considered to be sufficient back wages. According to him, back wages cannot be considered to be the legal right of the respondent workman. He has, however, fairly submitted that since the labour court has not imposed any punishment upon the respondent workman while directing his reinstatement under the impugned award, this Court may impose some reasonable punishment upon the respondent workman so that he may realize the same in view of continuation of punishment.

I have considered the submissions made by the learned advocates for the parties. Before the labour court, the charge levelled against the respondent has been held to have been proved and the findings of the inquiry officer were also not challenged by the workman before the labour court. Looking to the misconduct, ex parte inquiry was held against the respondent workman. Complaint filed by one passenger against the driver has become the sole basis of the charge sheet against the workman. However, since the disciplinary authority has not kept in view the length of service of the workman, his past clean record as well as socio economic and family back ground of the workman, the labour court was right in directing the reinstatement of the workman without back wages for the intervening period. However,

I am also of the view that mere denial of back wages for the intervening period cannot be considered to be sufficient punishment in the facts and circumstances of the case. There is yet one more factor which would require consideration that the respondent was dismissed from service on 31st December, 1993 and more than six years' wages have been denied and looking to his family circumstances and poor conditions of the respondent workman and considering his past clean record, reinstatement has been ordered by the labour court. Therefore, according to my opinion, looking to the misconduct committed by the respondent workman, some more punishment having recurring effect is required to be imposed upon the respondent workman.

In case of Jaswant Singh versus Pepsu Roadways Transport Corporation and another reported in AIR 1984 Supreme Court, 355, the apex court has observed as under:

"3. We are also clearly of the opinion that a driver of a passenger bus or for that matter any mechanically propelled vehicle cannot and should not consume intoxicating liquor while on duty because that endangers the safety not only of those in the vehicle but of those using the roads also. However, looking to the conduct of the appellant, it appears to be his first offence and the labour court in exercise of its jurisdiction under section 11A of the Industrial Disputes Act was of the opinion that in the facts of the case, punishment of dismissal was rather heavy and was not called for and, therefore, reduced the punishment. But the reduction was to a level namely mere refusal of back wages, which would be inadequate punishment in the facts of the case.

4. Having heard Mr. R.S. Sodhi, learned counsel for respondent employer, we are of the opinion that the Labour Court was right and justified in directing reinstatement of the appellant in service. Further, appellant is not entitled to back wages for the reasons that appealed to labour court. This is not adequate penalty for the misconduct proved. In our opinion, to keep the appellant within the bounds of well disciplined conduct a further punishment is also called for and should be imposed so that our humanistic approach may not, induce him to repeat his intemperate performance. Accordingly, we direct the appellant should not be given three increments in the time scale in which he would be

reinstated, for the next three years. For all benefits, he will be treated as continuing in service. The appeal is allowed to the extent herein indicated with no order as to costs. "

Therefore, looking to the facts and circumstances of the case and also considering the gravity of misconduct and past record of the workman, length of service, according to my opinion, it would be just and proper if total four annual increments of the respondent workman are ordered to be stopped with future effect. To that extent, the award made by the labour court in Reference No. 1104 of 1995 dated 14th June, 1999 is required to be modified. Accordingly, petitioner is directed to reinstate the respondent workman in service with effect from 14th June, 1999 with continuity of service and with stoppage of four annual increments with future effect. Petition is partly allowed. Rule is made absolute accordingly in terms indicated hereinabove.

Petitioner is also directed to reinstate the respondent workman in service within fifteen days from the date of receipt of copy of this order in terms of the award as modified by this Court as above. No order as to costs.DSP.

In view of the order passed in the main matter, civil application no. 791 of 2001 shall not survive. Same is, therefore, disposed of accordingly. No order as to costs.

18.2.2002 (H.K. Rathod,J.)

Vyas